



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Gerard Seeley, Jr.
Regional Director

AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO B.P. SHORT & SON PAVING CO., INC. Registration Number 30020

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and B.P. Short & Son Paving Co., Inc., for the purpose of resolving certain alleged violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Air Pollution Control Law" means Va. Code § 10.1-1300 *et seq.*
3. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
4. "B.P. Short" means B.P. Short & Son Paving Co., Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.

7. “Order” means this document, also known as a Consent Order.
8. “Facility” or “Plant” means the B.P. Short facility (Registration Number 30020), located at the Vulcan Materials Lawrenceville Quarry in Brunswick County, Virginia.
9. “Permit” means the New Source Review permit issued to B.P. Short & Son Paving Co., Inc. on October 24, 1994.
10. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. “Regulations” means the Commonwealth of Virginia State Air Control Board Regulations for the Control and Abatement of Air Pollution.

SECTION C: Findings of Fact and Conclusions of Law

1. B. P. Short operates a portable hot asphalt mix plant located at the Vulcan Materials Lawrenceville Quarry in Brunswick County, Virginia (“Facility”).
2. The Facility is a synthetic minor stationary source, and was issued a New Source Review Permit (“Permit”) on October 24, 1994. Virginia Code § 10.1-1322 of the State Air Pollution Control Law and 9 VAC 5-50-1210.H of the Virginia Regulations for the Control and Abatement of Air Pollution (“Regulations”) require the facility to abide by the conditions of the issued Permit.
3. On July 7, 2006 DEQ staff conducted an inspection of the Facility. The following violations were observed during the inspection:
 - a. Fugitive dust emissions from haul roads were not controlled so as to prevent particulate matter from becoming airborne, as required by condition number 4 of the permit and 9 VAC 5-50-90;
 - b. Visible emissions from the Bituma-Stor drum mix asphalt plant (“plant”) bag house exhaust exceeded the 20% opacity limit set forth by condition 12 of the Permit and 9 VAC 5-50-80;
 - c. Records of the sulfur content of purchased oil shipments and the 12-month consumption of No. 1 and No. 2 fuel were not maintained and were unavailable for inspection by DEQ staff, as required by condition 13 of the Permit and 9 VAC 5-50-50.F;
 - d. The Plant operated at the same location for more than 10 years without written approval; however condition 17 of the permit does not allow operation at a single site for greater than 18 months without written approval;
 - e. Maintenance schedules were not available at the time of the inspection, as required by condition 22 of the Permit; and

- f. A copy of the permit was not maintained on the premises of the facility, as required by condition 26 of the Permit.
4. On August 23, 2006, DEQ issued Notice of Violation ("NOV") Number 06-08-PRO-401 regarding above-described violations.
5. On September 7, 2006, a meeting was held between DEQ staff and a B.P. Short representative. After the meeting, most required records that were unavailable during the inspection were submitted to DEQ. The Facility also later submitted a permit application form 7 to reclassify itself as a stationary facility. B.P. Short will submit a corrective action plan to reduce visible emissions from the Plant and conduct follow-up testing, and will address fugitive dust emissions from all haul roads.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders B.P. Short, and B.P. Short voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders B.P. Short, and B.P. Short voluntarily agrees, to pay a civil charge of \$11,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Payment shall include the Federal Tax Identification Number for the Facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of B.P. Short, for good cause shown by B.P. Short, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violations specifically identified herein, including those matters addressed in the Notice of Violation issued to B.P. Short by DEQ on August 23, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

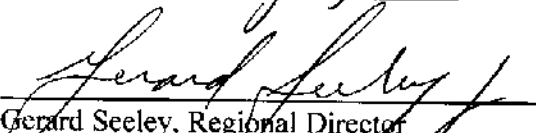
3. For purposes of this Order and subsequent actions with respect to this Order, B.P. Short admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. B.P. Short consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. B.P. Short declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by B.P. Short to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. B.P. Short shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. B.P. Short shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. B.P. Short shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and B.P. Short. Notwithstanding the foregoing, B.P. Short agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to B.P. Short. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve B.P. Short from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, B.P. Short voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of February 5, 2007.


Gerard Seeley, Regional Director
Department of Environmental Quality

B.P. Short voluntarily agrees to the issuance of this Order.

By: Burton P. Short, III
Burton P. Short, III,
President

Date: 2-1-07

Commonwealth of Virginia

City/County of Petersburg

The foregoing document was signed and acknowledged before me this 1st day of February, ~~2006~~ ²⁰⁰⁷, by Burton P. Short, III, who is
(name)

President/Treasurer of B.P. Short, Inc., on behalf of the Corporation.
(title)

Chene M. Harp
Notary Public

My commission expires: 7-31-2009

APPENDIX A

1. **No later than April 1, 2007**, B. P. Short shall conduct visible emission evaluations and performance tests for Total Particulate Matter from the aggregate dryer stack (D-1) to demonstrate compliance with the emission limits contained in this permit. Test methods shall be approved by DEQ in advance.
 - a. A report detailing the results of these tests shall be submitted to DEQ no later than **April 15, 2007**, and shall include a written description of corrective actions taken.
 - b. Should test indicate that B.P. Short is not in compliance with the applicable permit limits, B.P. Short shall submit a corrective action plan and schedule **no later than April 15, 2007**. The plan and schedule shall be implemented immediately upon approval by DEQ.
2. **No later than March 1, 2007**, B.P. Short shall submit maintenance records demonstrating that the maintenance schedule was implemented during September, October, November, and December 2006 and January 2007.
3. **No later than March 1, 2007**, B.P. Short shall submit records necessary to demonstrate that it used a mix containing less than 25% of recycled asphaltic materials to process asphalt concrete, as required by its Permit.
4. **No later than March 1, 2007**, B.P. Short shall reconcile the facility oil usage records with the annual fuel records for 2003, 2004, and 2005, and shall submit all corrected documents with an explanation of how the figures were reconciled.

All submittals required by this order shall be submitted to:

Allison C. Dunaway
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
Phone: (804) 527-5020
Fax: (804) 527-5106